

EXHIBIT 62

Richter, Elizabeth

December 7, 2007

Washington, DC

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

Videotaped deposition of ELIZABETH RICHTER

Washington, D.C.

Friday, December 7, 2007

9:00 a.m.

Henderson Legal Services, Inc.

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<p style="text-align: right;">Page 66</p> <p>1 average price being paid by customers was, you</p> <p>2 would agree with me that if that had been</p> <p>3 Congress' command to the agency the agency would</p> <p>4 have attempted to implement that command,</p> <p>5 correct?</p> <p>6 MR. DRAYCOTT: Objection. You can</p> <p>7 answer.</p> <p>8 A. If they had explicitly instructed us to</p> <p>9 survey -- I'm sorry. I'm not --</p> <p>10 Q. Let me ask it in a different way. Do</p> <p>11 you have Judge Saris' opinion there in front of</p> <p>12 you?</p> <p>13 A. I do.</p> <p>14 Q. What exhibit number is that?</p> <p>15 A. Exhibit Abbott 389.</p> <p>16 Q. Exhibit Abbott 389. Do you see at the</p> <p>17 bottom of page 39 Judge Saris says the court</p> <p>18 concludes the statutory term AWP to mean "The</p> <p>19 average price at which wholesalers sell drugs to</p> <p>20 their customers, including physicians and</p> <p>21 pharmacies."</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 statute to mean, right?</p> <p>2 A. Yes.</p> <p>3 Q. And you'll agree with me that from</p> <p>4 Louis B. Hays through Dr. Vladek through Ms. Min</p> <p>5 DeParle through Mr. Scully, through the</p> <p>6 information you've looked at no administrator</p> <p>7 thought that published AWP's represented the</p> <p>8 average price at which wholesalers sold drugs to</p> <p>9 their customers, correct?</p> <p>10 MR. DRAYCOTT: Objection.</p> <p>11 A. That is what their testimony says, yes.</p> <p>12 But again, without seeing the full context. But</p> <p>13 yes, that's what it says.</p> <p>14 Q. As a fair to assume that if Congress</p> <p>15 had never used the word average wholesale price,</p> <p>16 that if Congress had said, Dr. Vladek, Ms.</p> <p>17 DeParle, I want you to pay providers the average</p> <p>18 price at which wholesalers sell drugs to their</p> <p>19 customers, that the last place they would have</p> <p>20 looked would have been in compendia for AWP's?</p> <p>21 MR. DRAYCOTT: Objection.</p> <p>22 A. I have no -- I can't step in their</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. If Congress had instructed CMS to pay</p> <p>2 95 percent of "The average price at which</p> <p>3 wholesalers sell drugs to their customers,</p> <p>4 including physicians and pharmacies," do you have</p> <p>5 any reason to believe that CMS would have</p> <p>6 implemented that statutory command by looking up</p> <p>7 AWP's in the compendia?</p> <p>8 MR. DRAYCOTT: Objection. You can</p> <p>9 answer.</p> <p>10 A. I think that's what HCFA did. And I</p> <p>11 can't say other than by the information in the</p> <p>12 regulations and the preambles -- I can't say what</p> <p>13 the correction was. And it seems to me that we</p> <p>14 make decisions every day about how to implement</p> <p>15 something based on the resources available to</p> <p>16 implement that program and the other commitments</p> <p>17 of the agency. And we don't live in a world of</p> <p>18 perfect information. And so the decision was</p> <p>19 made to use the compendia AWP's.</p> <p>20 Q. You'll agree with me that the agency</p> <p>21 implemented the statute as it understood the</p> <p>22 statute -- in good faith, what it understood the</p>	<p style="text-align: right;">Page 69</p> <p>1 shoes and figure out where they would have looked</p> <p>2 or not looked.</p> <p>3 Q. Vaccines are paid based upon the</p> <p>4 current published AWP's, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Currently is the agency undertaking any</p> <p>7 effort to determine what the average price is at</p> <p>8 which wholesalers are selling drugs to their</p> <p>9 customers other than by looking it up in</p> <p>10 compendia?</p> <p>11 MR. DRAYCOTT: Objection. You can</p> <p>12 answer.</p> <p>13 A. Not to my knowledge, no.</p> <p>14 Q. So do you understand today to be the</p> <p>15 statutory command to pay average wholesale price</p> <p>16 to be satisfied by looking it up in the</p> <p>17 compendia?</p> <p>18 MR. DRAYCOTT: Objection.</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand that Congress had</p> <p>21 ordered you to pay the average price at which</p> <p>22 wholesalers are selling vaccines to their</p>

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